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HUB LAW OFFICES

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN

13 CHURCH OF SCIENTOLOGY)
14 INTERNATIONAL, a California not-for-profit)
15 religious corporation,)

16 Plaintiff,)

18 vs.)

19)
20 GERALD ARMSTRONG; DOES 1 through 25,)
21 inclusive,)

22 Defendants.)
23 _____)
24)
25)
26)
27)
28)

CASE NO. BC 157680

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
PLAINTIFF'S MOTION FOR
SUMMARY ADJUDICATION OF
THE TWENTIETH CAUSE OF
ACTION OF PLAINTIFF'S
COMPLAINT

DATE: March 31, 1995
TIME: 9:00 a.m.
DEPT: 1

DISCOVERY
CUT-OFF: March 16, 1995
MTN CUT-OFF: April 18, 1995
TRIAL DATE: May 18, 1995

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1 I. PRELIMINARY STATEMENT

2 Plaintiff, Church of Scientology International ("the Church"), seeks summary
3 adjudication of its Twentieth Cause of Action against defendant Gerald Armstrong, and the
4 entry of a permanent injunction pursuant thereto.

5 A permanent injunction is necessary in this action because defendant Gerald
6 Armstrong's breaches of the 1986 settlement agreement ("the Agreement") are repeated,
7 unceasing, and increasingly harmful to the Church. Armstrong's determination to ignore the
8 provisions of the Agreement despite legal action is dramatically evidenced simply by the
9 progression of the pleadings in this case:

10 * When this action was filed, the Church had evidence of four breaches
11 of the Agreement by Armstrong, beginning in July 1991, which it set forth in its
12 original complaint;

13 * By June 4, 1992, the Church was forced to amend its complaint to add
14 seven more causes of action which it had discovered;

15 * In July 1993 Armstrong's additional breaches of the agreement had
16 grown so numerous that the Church filed a second, separate action alleging those
17 claims;

18 * These were consolidated into the present operative pleading -- the
19 Second Amended Complaint -- which now addresses 19 separate breaches of the
20 Agreement by Armstrong;

21 * Armstrong was deposed again in August and October, 1994. During
22 those deposition sessions, he admitted to in excess of 29 additional breaches of the
23 agreement, each of which is delineated in full in the accompanying Separate Statement
24 of Undisputed Facts.¹

25 For years, Armstrong has insisted that the Church cannot enforce the Agreement and
26

27 ¹ At the end of the second day of deposition, Armstrong's attorney volunteered that he
28 would not oppose a motion by the Church to amend the complaint yet again to include these
newly admitted breaches.

1 simply ignored all reasonable efforts by the Church or the courts to persuade him to abide by
2 his word. After a preliminary injunction was entered against him, Armstrong proclaimed in
3 deposition:

4 I have absolutely no intention of honoring that settlement agreement. I
5 cannot. I cannot logically. I cannot ethically. I cannot morally. I cannot
6 psychically. I cannot philosophically. I cannot spiritually. I cannot in any
7 way. And it is firmly my intention not to honor it.

8 Q. No matter what a court says?

9 A. No court could order it. They're going to have to kill me.

10 [Sep.St.No. 87].²

11 Indeed, as recently as February 2, 1995, Armstrong sent a letter to a Church
12 employee, which he claimed to have copied to "Media," to which he attached a copy of a
13 declaration which this Court had ordered stricken on January 27, 1994. In the letter
14 Armstrong reiterated his refusal to abide by the Agreement, claiming

15 What Scientology is doing with me is suppressive, and threatening to
16 justice, wisdom and innocent people everywhere. I will continue to stand my
17 ground and I refuse to be suppressed. . . . As long as I breathe I will
18 continue to do what I see as God's will, and continue to bring Scientology's
19 evil nature to the light of truth.

20 [Sep.St.No. 97].

21 This Court has already adjudicated, however, that the Agreement is valid and may be
22 enforced against Armstrong, enforcing paragraph 7(D) of the Agreement as to two of the
23 many breaches [Sep.St.No. 1]. In May, 1992, the Los Angeles Superior Court entered a
24 preliminary injunction enforcing still other provisions of the Agreement [Sep.St.No. 86].
25 Here, plaintiff has set forth all of the undisputed evidence which compels the conclusion that
26 plaintiff is entitled to a permanent injunction which prohibits Armstrong from violating key
27 provisions of the Agreement. Specifically, plaintiff seeks an injunction which:
28

² All references to evidence are to the Separate Statement of Undisputed Facts, concurrently filed, which provides, by number, a full reference to the evidence in support of this motion. References will be made to "Sep.St.No. ___" for "Separate Statement of Undisputed Facts, Fact Number ___."

1 1. Prohibits Armstrong³ from voluntarily assisting private litigation adversaries⁴
2 of the Church and/or the protected entities and individuals,⁵ or from assisting would-be anti-
3 Scientology claimants;

4 2. Prohibits Armstrong from facilitating in any way the publication of any book,
5 article, film, television program, radio program or other literary, artistic or documentary
6 work of any kind which discusses Scientology and/or any of the Beneficiaries;

7 3. Prohibits Armstrong from discussing Scientology and/or the Beneficiaries with
8 third parties other than members of his immediate family;

9 4. Requires Armstrong to remove all information concerning the Church and/or
10 any of the Beneficiaries from any and all databases, electronic or otherwise, within the
11 possession, custody or control of Armstrong's Colorado corporation, FACTNet;⁶

12 5. Requires Armstrong to return to the Church any documents which he now has
13 in his possession, custody or control which discuss or concern the Church and/or any of the
14 Beneficiaries;⁷ and
15

16 ³ Plaintiff requests that the permanent injunction apply to Armstrong, the Gerald Armstrong
17 corporation, their agents or employees, and persons acting in concert or conspiracy with
18 them. For the full text of the injunction which plaintiff requests, see Proposed Order of
Permanent Injunction, filed concurrently herewith.

19 ⁴ The Church is mindful of this Court's comments when summarily adjudicating the Fourth
20 and Sixth Causes of Action concerning governmental bodies, and is not seeking a permanent
21 injunction which would restrict Mr. Armstrong's voluntary assistance to governmental
entities.

22 ⁵ Paragraph 1 of the Agreement lists the individuals and entities to be protected by the
Agreement. They are hereinafter referred to collectively as "the Beneficiaries."

23 ⁶ "FACTNet" stands for "Fight Against Coercive Tactics Network, Inc." It is a Colorado
24 corporation which Armstrong formed, with friend Lawrence Wollersheim, to provide access
25 to materials for persons who were engaged in litigation with various Churches of
Scientology, or who were contemplating pressing such claims [Sep.St.Nos. 81-85].

26 ⁷ Recognizing that Armstrong will argue that such a prohibition could prevent him from
27 further litigating in this action, the proposed permanent injunction order provides that
documents actually filed in this litigation could be retained by Armstrong's counsel, for the

(continued...)

1 documents which related to the Church or other protected entities and individuals.

2 Armstrong admittedly received more than half a million dollars as his portion of a
3 total settlement paid to his attorney, Michael Flynn, in a block settlement concerning all of
4 Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity.
5 [Sep.St.Nos. 2-3.]

6 **B. Armstrong's Admitted Breaches Of The Agreement**

7 That Armstrong has repeatedly breached numerous provisions of the Agreement is not
8 in dispute. The evidence of these breaches consists of Armstrong's own admissions and
9 documents, and is referenced in detail in the accompanying Separate Statement of Undisputed
10 Facts.

11 1. **Breaches Consisting of Voluntary Assistance To Adverse Litigants And/Or**
12 **Claimants**

13 Paragraphs 7(G), 7(H) and 10 of the Agreement prohibit Armstrong from assisting or
14 advising anyone "contemplating any claim or engaged in litigation" which is adverse to the
15 Church or to any of the Beneficiaries of the Agreement. Armstrong agreed not to voluntarily
16 assist others "adverse to Scientology," and not to testify in proceedings other than pursuant
17 to a lawfully issued subpoena. Between 1991 and the present, Armstrong has admitted to
18 providing voluntary assistance, exclusive of testimony pursuant to subpoena, to the following
19 private individuals and/or their attorneys, in direct breach of these provisions:

20 * Vicki and Richard Aznaran, anti-Scientology litigants in the case of Vicki
21 Aznaran, et al. v. Church of Scientology International, United States District Court
22 for the Central District of California, Case No. CV 88-1786 (JMI) [Sep.St.Nos. 11-
23 16];

24 * Joseph A. Yanny, anti-Scientology litigant in the case of Religious Technology
25 Center et al. v. Joseph Yanny, et al., Los Angeles Superior Court No. C 690211 and
26 Religious Technology Center et al. v. Joseph Yanny, et al., Los Angeles Superior
27 Court No. BC 033035 [Sep.St.Nos. 17-20];

28 * Malcolm Nothling, anti-Scientology litigant in the matter between Malcolm

1 Nothling and the Church of Scientology in South Africa, Adi Codd, Diane Kemp,
2 Glen Rollins; Supreme Court of South Africa (Witwatzbsrand Local Division) Case
3 No. 19221/88. [Sep.St.Nos. 21-24];

4 * Reader's Digest Corporation, anti-Scientology litigant in the case of Church of
5 Scientology of Lausanne vs. Kiosk AG, Basel, Switzerland [Sep.St.Nos. 25-26];

6 * Richard Behar, anti-Scientology litigant in the case of Church of Scientology
7 International v. Time Warner, Inc.; Time Inc. Magazine Company and Richard
8 Behar, United States District Court, Southern District of New York, Case No. 92
9 Civ. 3024 PKL [Sep.St.Nos. 27-28];

10 * Steven Hunziker, anti-Scientology litigant in the case of Hunziker v. Applied
11 Materials, Inc., Santa Clara Superior Court Case No. 692629 [Sep.St.Nos. 29-33];

12 * David Mayo, anti-Scientology litigant in the case of Religious Technology
13 Center v. Robin Scott, et al., United States District Court for the Central District of
14 California, Case No. 85-711 [Sep.St.Nos. 34-35];

15 * Cult Awareness Network, anti-Scientology litigant in the case of Cult
16 Awareness Network v. Church of Scientology International, et al., Circuit Court of
17 Cook County, Illinois, No. 94L804 [Sep.St.Nos. 38-39];

18 * Lawrence Wollersheim, anti-Scientology litigant in the cases of Lawrence
19 Wollersheim v. Church of Scientology of California, Los Angeles Superior Court
20 Number C332027 and Church of Scientology of California v. Lawrence Wollersheim,
21 Los Angeles Superior Court Number BC074815 [Sep.St.Nos. 40-42];

22 * Ronald Lawley, anti-Scientology litigant in the cases of Religious Technology
23 Center, et al. vs. Robin Scott, et al., U.S. District Court, Central District of
24 California, Case No. 85-711 MRP(Bx); Matter Between Church of Scientology
25 Advanced Organization Saint Hill Europe and Africa, and Robin Scott, Ron Lawley,
26 Morag Bellmaine, Stephen Bisbey in the High Court of Justice Queen's Bench
27 Division, Case 1984 S No. 1675; and Matter Between Church of Scientology
28 Religious Education College Inc., and Nancy Carter, Ron Lawley, Steven Bisbey, in

1 the High Court of Justice Queen's Bench Division, Case 1986 C No. 12230
2 [Sep.St.Nos. 43-44];

3 * Uwe Geertz and Steven Fishman, anti-Scientology litigants in the case of
4 Church of Scientology International v. Steven Fishman, et al., United States District
5 Court for the Central District of California Number 91-6426 HLH(Tx) [Sep.St.Nos.
6 45-46];

7 * Tilly Good, a claimant against the Church of Scientology, Mission of
8 Sacramento Valley [Sep.St.Nos. 36-37];

9 * Denise Cantin, a claimant against the Church of Scientology of Orange
10 County; Church of Scientology of Boston; and Church of Scientology, Flag Service
11 Organization [Sep.St.Nos. 36-37]; and

12 * Ed Roberts, a claimant against the Church of Scientology of Stevens
13 Creek [Sep.St.Nos. 36-37].

14 2. Breaches Consisting of Creating, Assisting Or Attempting To
15 Create Media Publications Concerning Scientology

16 In paragraph 7(D) of the Agreement, Armstrong agreed, in part, that he would not
17 create or publish, or assist another in creating or publishing, any media publication or
18 broadcast concerning information about the Church, L. Ron Hubbard or any of the other
19 Beneficiaries of the Agreement. This Court has already enforced this portion of paragraph
20 7(D), by granting summary adjudication as to the Sixth Cause of Action [Request For
21 Judicial Notice, Ex. C]. Between 1992 and the present, Armstrong has admitted to assisting
22 (or attempting to assist) the following individuals and/or publications in creating or
23 publishing a media publication or broadcast concerning the Church and/or the Beneficiaries:

24 * Cable Network News: reporter Don Knapp, in March, 1992 [Sep.St.Nos. 47-
25 48];

26 * American Lawyer Magazine: reporter Bill Horne, in March, 1992 [Sep.St.No.
27 49];

28 * Los Angeles Times: reporter Bob Welkos, in May, 1992; and reporter Joel

1 Sappell, in June, 1993 [Sep.St.Nos. 50-51];
2 * CAN Video Interview, with anti-Scientologists "Spanky" Taylor and Jerry
3 Whitfield, in November, 1992 [Sep.St.No. 52];
4 * KFOX Radio: interview planned but prevented in April, 1993 [Sep.St.No. 53];
5 * Newsweek Magazine: reporter Charles Fleming, in June, 1993 and August,
6 1993 [Sep.St.No. 54-56];
7 * Daily Journal: reporter Mike Tipping, in June, 1993 [Sep.St.No. 57];
8 * Time Magazine: reporter Richard Behar, in March, 1992 and in June, 1993
9 [Sep.St.Nos. 58-59];
10 * San Francisco Recorder: reporter Jennifer Cohen, in August, 1993 [Sep.St.No.
11 60];
12 * E! Entertainment Network: reporter Greg Agnew, in August, 1993
13 [Sep.St.No. 61];
14 * WORD Radio: Pittsburgh, Pennsylvania, interviewed in the fall of 1993
15 [Sep.St.No. 62];
16 * St. Petersburg Times: St. Petersburg, Florida, reporter Wayne Garcia, in the
17 fall of 1993 [Sep.St.No. 63];
18 * Premiere Magazine: letter to the editor, in October, 1993 [Sep.St.No. 64];
19 * Mirror-Group Newspapers: United Kingdom, in May, 1994
20 [Sep.St.No. 65];
21 * Gauntlet Magazine: New York, New York, reporter Rick Cusick in June,
22 1994 [Sep.St.No. 66];
23 * Pacific Sun Newspaper: reporter Rick Sine, in June and July, 1994
24 [Sep.St.No. 67];
25 * Disney Cable: reporter Marsha Nix, in August, 1994 [Sep.St.No. 68]; and
26 * Tom Voltz: Swiss author writing a book about Scientology, in October, 1994
27 [Sep.St.No. 69].

28 In addition, Armstrong has admitted to preparing and copyrighting at least three

1 manuscripts discussing his claimed Scientology experiences, including a screen play
2 [Sep.St.Nos. 70-71]. In July, 1993, Armstrong wrote to his friend, Lawrence Wollersheim,

3 [A]s I mentioned a couple of weeks back, I have registered a treatment
4 of my Scientology experiences for motion picture purposes. I will now
5 forward with a synopsis of the later years to possible producers. This project,
6 I think, will be where many of my hours in the next couple of years will go,
7 and will bring me into direct conflict with the Scientology organization on its
8 beachhead in Hollywood.

9 [Sep.St.No. 70].

10 **3. Additional Breaches Consisting of Discussing Scientology, The Church,
11 And/Or The Beneficiaries With Others**

12 In paragraphs 7(D) and 7(H) of the Agreement, Armstrong further agreed that beyond
13 his immediate family members, he would not discuss with others his knowledge and
14 information about Scientology, his experiences in or with Scientology, or their knowledge of
15 or experiences with Scientology. This Court has already enforced this confidentiality portion
16 of paragraph 7(D), by granting summary adjudication as to the Fourth Cause of Action
17 [Sep.St.No. 1]. Of course, many of the breaches discussed in Parts II B1&2, supra, were
18 also breaches of this portion of the Agreement. However, Armstrong has also admitted to
19 violations of this paragraph of the Agreement with the following additional persons or
20 groups, not earlier identified: Robert Lobsinger [Sep.St.No. 72]; the New York Times
21 [Sep.St.No. 73]; Toby Plevin, Stuart Culter, Anthony Laing, Kent Burtner, and Margaret
22 Singer [Sep.St.No. 74]; Priscilla Coates [Sep.St.No. 75]; Omar Garrison [Sep.St.No. 76];
23 Vaughn and Stacy Young [Sep.St.No. 77]; a Stanford University psychology class
24 [Sep.St.No. 78]; attendees at the 1992 Cult Awareness Network Convention [Sep.St.No. 79];
25 and Hana Whitfield [Sep.St.No. 80].

26 **4. The Creation Of FACTNet To Breach The Agreement**

27 In June, 1993, Armstrong and anti-Scientologist Lawrence Wollersheim organized
28 "Fight Against Coercive Tactics Network, Inc." (hereinafter "FACTNet") a Colorado non-
profit corporation [Sep.St.No. 81].

Armstrong has testified under oath that he was an incorporator of FACTNet and
served as its first president [Sep.St.No. 81]. According to Armstrong, FACTNet was

1 organized "to create an electronic means of assisting the battle against harmful mind control
2 in its various forms and through its various arms, one of which -- and undeniably a major
3 one in my life -- was Scientology." [Sep.St.No. 82]. He has described FACTNet as "the
4 electronic backup" to anti-Scientology litigation, and has admitted that the purposes of
5 assembling the database included "providing access to materials for persons who were
6 engaged in litigation with various Church of Scientology entities," and "making information
7 available to persons who might be contemplating pressing claims against various Church of
8 Scientology entities." [Sep.St.No. 83].

9 Armstrong has further admitted that he himself was a major contributor to the anti-
10 Scientology library contained in FACTNet's database. He has admitted that he supplied anti-
11 Scientology materials for FACTNet's database before FACTNet was incorporated, while he
12 was its president, and after he ceased to be an officer of FACTNet [Sep.St.No. 84]. He has
13 admitted to supplying FACTNet with declarations, personal writings, exhibits and other
14 documents which Armstrong had "possessed and assembled." Armstrong estimated that he
15 had contributed in the neighborhood of two to three inches of anti-Scientology documents to
16 FACTNet. [Id.] In a July 4, 1993 letter to Lawrence Wollersheim, Armstrong stated that
17 he expected his role in FACTNet to be one of "strategy, planning and consultation."
18 [Sep.St.No. 85].

19 **C. Armstrong's Intention To Commit Future Breaches**

20 Armstrong's intention to continue to breach the Agreement, regardless of the
21 consequences, is also not in dispute. Indeed, Armstrong's response to every request by
22 plaintiff that he honor the Agreement, and every Court Order enforcing the Agreement, has
23 been defiance.

24 On May 28, 1992, the Honorable Ronald Sohigian of the Los Angeles Superior Court
25 issued a preliminary injunction in this action, which provided in relevant part:

26 Defendant Gerald Armstrong, his agents, and persons acting in concert
27 or conspiracy with him (excluding attorneys at law who are not said defendan-
28 t's agents or retained by him) are restrained and enjoined during the pendency
of this suit pending further order of this court from doing directly or indirectly
any of the following:

1 Voluntarily assisting any person (not a governmental organ or entity)
2 intending to make, intending to press, intending to arbitrate, or intending to
3 litigate a claim against the persons referred to in sec. 1 of the "Mutual Release
of All Claims and Settlement Agreement" of December 1986 regarding such
claim or regarding pressing, arbitrating or litigating it.

4 Voluntarily assisting any person (not a governmental organ or entity)
5 arbitrating or litigating a claim against the persons referred to in sec. 1 of the
6 "Mutual Release of All Claims and Settlement Agreement" of December,
1986.

7 [Sep.St.No. 86].⁹ The Court of Appeal upheld this injunction [Sep.St.No. 1]. Nonetheless,
8 Armstrong has proclaimed, repeatedly and as recently as mere weeks ago, that he has no
9 intention of honoring the promises which he made in the Agreement or abiding by the
10 preliminary injunction. A review of Armstrong's own statements concerning the injunction
11 and the agreement makes it plain that this Court must issue a permanent injunction which is
12 crystal clear and broad in scope. Armstrong will use any creative argument he can invent to
13 avoid his legal obligations. For example:

14 + Less than a month after the May 28 Order was issued, Armstrong asserted under oath
15 in deposition:

16 I have absolutely no intention of honoring that settlement agreement. I
17 cannot. I cannot logically. I cannot ethically. I cannot morally. I cannot
psychically. I cannot philosophically. I cannot spiritually. I cannot in any
way. And it is firmly my intention to not honor it.

18 Q. No matter what a court says?

19 A. No court could order it. They're going to have to kill me.

20 [Sep.St.No. 87].

21 + In November, 1992, Armstrong gave a lengthy videotaped interview
22 concerning his Scientology experiences to anti-Scientologists, in which he described the
23

24 ⁹ At the time of the hearing on the preliminary injunction, the Church was not aware of
25 many of Armstrong's breaches, which have since been revealed. Armstrong's interviews
26 with the media, creation of the videotape, preparation of a screenplay and creation of the
27 FACTNet database, for example, were not presented to the Court in the Church's request for
28 preliminary injunction. In seeking permanent injunction, the Church requests an expansion
of the preliminary injunction that would prohibit all of the violations of the Agreement
proven herein.

1 preliminary injunction as follows:

2 I cannot, except pursuant to a subpoena, assist someone intending to
3 file a claim or pressing a claim against the organization. Now then we are
4 appealing even that narrow ruling, because that's unenforceable because if you
5 construe that my ... that this video could possibly indirectly help someone in
the future, I can't do this. And not only that but if you consider that my
existence indirectly or directly helps someone, then I'll oblige to take my own
life. In other words I must stop breathing.

6 [Sep.St.No. 88].

7 + On December 22, 1992, Armstrong sent a letter to plaintiff's counsel,¹⁰ in
8 which he threatened that if the Church did not pay him \$500,000 and dismiss this lawsuit, he
9 would travel to South Africa to testify against a Church of Scientology, give interviews to the
10 media, and assist anyone and everyone opposing Churches that he could locate [Sep.St.No.
11 89]. Expressing the viewpoint that the May 28 Order placed no restrictions whatsoever on
12 his conduct, Armstrong stated:

13 I consider myself free to do anything anyone can, except testify absent
14 a subpoena. Much of what I am permitted to do I am going to do. . . .

15 I will continue to associate with and befriend all those people I consider
16 you attack unjustly and senselessly. I will make my knowledge and support
17 available to the Cult Awareness Network, a group of people of good will you
vilify, in all the litigation you have fomented against them¹¹. . . . I will even
make my knowledge and support available to entities like Time and people like
Rich Behar in their defenses from your attacks.¹²

18 [Sep.St.No. 90]. In that same letter, Armstrong made plain the personal contempt which he

20 ¹⁰ In what can only be described as deliberate harassment, Armstrong also sent copies of the
21 letter to 35 individuals and groups, including anti-Church litigants, such as Vicki and Richard
22 Aznaran, Larry Wollersheim and Joseph Yanny, and lawyers who represent clients in actions
brought against one of more churches, including Toby Plevin, John Elstead and Daniel
Leipold.

23 ¹¹ The Cult Awareness Network is an anti-religious group that advocates the kidnapping and
24 forcible "deprogramming" of individuals belonging to religions which they have identified as
25 "cults." While the Church is not presently suing the Cult Awareness Network in any
26 litigation, the Cult Awareness Network and its Executive Director, Cynthia Kissler, have
initiated three actions against various Church of Scientology [Sep.St.No. 38].

27 ¹² Behar is the author of a Time cover story concerning the Church which ran in May, 1991.
28 The Church is presently engaged in a lawsuit against Time and Behar for defamation
[Sep.St.Nos. 27].

1 had for a court which would rule against him:

2 There is also, as mentioned above, the fact that in order to defend
3 myself from your attacks and to fund the defense of the litigation you have
4 fomented I must speak and must publish. I'm sure you understand that I
5 remain completely confident that no court, other than the odd one your
6 mercenaries are able to compromise with bucks, babes or bull, will order me
7 not to defend myself.

8 [Sep.St.No. 91].

9 + In February, 1993, Armstrong executed a declaration in which he had this to
10 say about the preliminary injunction:

11 When I received and read the Sohigian ruling I sought to divine its meaning
12 and apply it sensibly to my life, work and legal situation. If it meant precisely what
13 it said then I would have to stop breathing because by breathing I would be indirectly
14 assisting any person litigating a claim against the organization entities referred to in
15 sec. 1 of the settlement agreement. Obviously, therefore, Judge Sohigian did not
16 mean what he stated. If he meant only that I could not, as opposed to passive
17 assistance to litigating claimants such as breathing, living and writing magazine
18 articles for the public generally, physically act to help such a claimant personally, I
19 would have to ensure every little old lady or little old man I might escort across the
20 road was not such a claimant. I am certain Judge Sohigian did not intend that. . . I
21 do not believe such non-assistance covenants or orders are legal or do anything but
22 obstruct the administration of justice and attempt to destroy mens' souls.

23 [Sep.St.No. 92].

24 + Armstrong has also insisted, repeatedly, that the plain provisions of the
25 Agreement simply don't apply to him. On May 3, 1993, he wrote to plaintiff's counsel,
26 Laurie Bartilson, saying:

27 You are in error in your interpretation of the December 6, 1986
28 settlement agreement. I did not agree on that date to forego future media
appearances for a substantial sum of money. . . .

1 [Sep.St.No. 93]. According to Armstrong's twisted logic, by insisting that Armstrong was
2 required to abide by the written agreement, the Church was engaging in what he termed
3 "continuing calumny," and justifying his further breaches. According to Armstrong,
4 preventative actions taken by Ms. Bartilson to restrain a media appearance by Armstrong
5 were "obscene":

6 Your threat that you will subject me to the liquidated damages
7 provision of the agreement for appearing [on a radio program] is obscene.
8 Even its inclusion in the settlement agreement, that is \$50,000 per word I
9 write or speak about your organization is obscene.

1 [Sep.St.No. 93].

2 + In a letter to plaintiff's counsel dated August 16, 1993, Armstrong took a new
3 approach to the problem: he decided to proclaim that his breaches of the Agreement were
4 not discrete, but rather a single, continuing breach, which he would not end:

5 [M]y breaching of the agreement has continued unabated since 1990. It is my
6 duty, therefore, to continue that breach unabated until the agreement is
7 rescinded and no longer exists to be breached. This letter also serves to advise
8 you and your client to not waste its victims "donations" sending around its
9 camera-toting PIs to try to catch me in an instant when I am doing something
other than my unbroken breach. If I am not heard to be breaching the
agreement at any moment, I have not stopped doing so, but am just between
words or breaching in whisper. Even in my sleep, though I may not be
somniaquizing, I am in every instant breaching the agreement.

10 [Sep.St.No. 94].

11 + In June, 1994, Armstrong gave an interview to Pacific Sun reporter Rick Sine,
12 in which he claims to have given Sine still another interpretation of the Agreement: that his
13 breaches were dictated by fate:

14 I stated that, certainly at one point, that the settlement agreement was
15 unenforceable from the start; and according to the language of the settlement
16 agreement, it was absolutely impossible to live, live by it; and I realize it would have
17 driven me absolutely nuts to even attempt. Nevertheless, I had tried to live by it and
live within what I call the spirit of settlement, unless I arrived at a point where it
simply was impossible and I had to take a stand and had to do -- take the acts, do the
things that I ended up doing.

18 [Sep.St.No. 95]. In a letter to the editor of that paper, Armstrong boasted, just a few weeks
19 later, that Judge Sohigian "refused the organization's gargantuan effort to gag me. . . . I
20 rarely had to consider violating the injunction to help [people]. Everyone else I help with
21 impunity." [Sep.St.No. 96].

22 + On January 27, 1995, this Court adjudicated Armstrong to be in breach of the
23 Agreement and ordered him to pay plaintiff \$100,000 for these breaches. Just a few days
24 later, Armstrong took it upon himself to write to the Church, copying the "media," his
25 proclamation that the Court's Order would not stop him from future breaches:

26 What Scientology is doing with me is suppressive, and threatening to
27 justice, wisdom and innocent people everywhere. I will continue to stand my
28 ground and I refuse to be suppressed. . . . As long as I breathe I will
continue to do what I see as God's will, and continue to bring Scientology's
evil nature to the light of truth.

1 [Sep.St.No. 97].

2 Obviously, Armstrong does not consider the Agreement, or its liquidated damages
3 provisions, to be a deterrent, or to restrict his conduct in any way. A permanent, specific,
4 and forceful injunction is necessary to restore to plaintiff the status quo which existed in
5 December, 1986.

6 **III. ARGUMENT**

7 **A. The Necessity Of A Permanent Injunction May Be**
8 **Determined By Summary Adjudication**

9 A motion for summary adjudication "shall be granted if all the papers submitted show
10 that there is no triable issue as to any material fact and that the moving party is entitled to a
11 judgment as a matter of law." Code Civ. Proc. § 437c(c). As demonstrated below, and in
12 the Separate Statement of Undisputed Facts, the Church has met its burden by proving, from
13 Armstrong's own admissions, each element of the cause of action for injunctive relief. This
14 Court has already determined that Armstrong's claimed affirmative defenses are inadequate
15 as a matter of law. [Order of January 27, 1995.]

16 Once the moving party has shown the nonexistence of a factual dispute as to a
17 material fact, the party opposing the motion can avoid summary adjudication only by
18 presenting evidence tending to demonstrate that there exists a triable issue of material fact.
19 See, e.g., University of Southern California v. Superior Court (1990) 222 Cal.App.3d 1028,
20 1036, 272 Cal.Rptr. 264.

21 Indeed, courts have found summary adjudication to be particularly appropriate for
22 resolving a cause of action for breach of a written contract. "Where there is no conflict as to
23 the terms of a contract, and where its provisions are not uncertain or ambiguous, its
24 'meaning and effect * * * and the relation of the parties to it thereby created * * * become a
25 question of law to be decided by the court.'" Nizuk v. Georges (1960) 180 Cal.App.2d 699,
26 705, 4 Cal.Rptr. 565, 570 (citations omitted) (liability under written employment contract
27 properly decided on motion for summary judgment). Permanent injunctive relief may be had
28 without trial where, as here, the facts which support issuance of the permanent injunction are

1 undisputed. Camp v. Mendocino County Board of Supervisors (1981) 123 Cal.App.3d 334,
2 357-358, 176 Cal.Rptr. 620, 635.

3 **B. An Injunction May Be Granted To Prevent The Breach Of A Contract The**
4 **Performance Of Which Would Be Specifically Enforced**

5 C.C.P. § 526 empowers the court to grant an injunction to prevent a breach of a
6 contract if the contract is one which may be specifically enforced. C.C.P. § 526; see also,
7 Steinmeyer v. Warner Consolidated Corp. (1974) 42 Cal.App.3d 515, 518, 116 Cal.Rptr.
8 57, 60 ("An injunction cannot be granted to prevent breach of a contract which is not
9 specifically enforceable."); Southern Christian Leadership Conference of Greater Los
10 Angeles v. Al Malaikah Auditorium Co. (1991) 230 Cal.App.3d 207, 281 Cal.Rptr. 216.
11 The Agreement at issue is one which may be specifically enforced by this Court as the
12 contract is sufficiently definite and certain in its terms, it is just and reasonable, the plaintiff
13 has performed its side of the bargain, Armstrong has breached the contract, the Agreement
14 was supported by adequate consideration, and the Church's remedy at law is inadequate.
15 Taramind Lithography Workshop, Inc. v. Sanders (1983) 143 Cal.App.3d. 571, 575, 193
16 Cal.Rptr. 409, 410.

17 A permanent injunction may be granted to prevent breach of contract "[w]here
18 pecuniary compensation would not afford adequate relief" or "[w]here the restraint is
19 necessary to prevent a multiplicity of judicial proceedings." Civil Code § 3422(1), (3). As
20 demonstrated below, both of these circumstances are present in this case.

21 Civil Code § 3389 expressly provides that a liquidated damages provision does not
22 preclude a contract from being specifically enforceable. Accordingly, the Court is
23 empowered to grant a permanent injunction to enjoin Armstrong from further breach, not
24 withstanding that some, but not all, of the clauses in the settlement agreement provide for
25 liquidated damages.

26 **C. Prevention Of Irreparable Injury And Avoidance Of Multiplicity Of Actions**
27 **Requires The Court To Issue A Permanent Injunction**

28 The Los Angeles Court has already issued a preliminary injunction enforcing the
settlement agreement. Moreover, Scientology's former Mother Church, the Church of

1 Scientology of California ("CSC"), has already obtained injunctions and specific performance
2 of similar settlement agreements. Thus, while C.C.P. § 526(5) deters the granting of
3 injunctions to prevent the breach of a contract "the performance of which would not be
4 specifically enforced," this Agreement patently is specifically enforceable. In Wakefield v.
5 Church of Scientology of California (11th Cir. 1991) 938 F.2d 1226, CSC obtained specific
6 performance of an agreement substantially similar to this Agreement. CSC moved to enforce
7 the provisions of the settlement agreement, and the district court ordered hearings before the
8 magistrate judge, who concluded that Wakefield had violated the agreement. The district
9 court adopted the magistrate judge's findings and issued a preliminary and permanent
10 injunction prohibiting Wakefield from violating the agreement. Id. When Wakefield
11 violated the injunction, again making media appearances, CSC sought an order to show cause
12 why Wakefield should not be held in contempt. At an in camera proceeding, the magistrate
13 judge found that Wakefield had willfully violated the injunction, and recommended that the
14 case be referred to the United States Attorney's office for criminal contempt proceedings.
15 Id. at 4628.

16 Although the district court's issuance of the injunction in Wakefield was not at issue
17 in the Eleventh Circuit proceedings, the Eleventh Circuit described in its opinion,
18 "Wakefield's constant disregard and misuse of the judicial process," suggesting approval of
19 the district court's actions. Id. at 4630.

20 Similarly, in McLean v. Church of Scientology of California (11th Cir. 1991) (Slip
21 Op.) plaintiff McLean also entered into a settlement agreement containing confidentiality
22 provisions preventing her from discussing the litigation with anyone outside her immediate
23 family. Id. at 2. By her own testimony, McLean admitted to reacquiring certain documents
24 and using them to "counsel" Church members. She further admitted to discussing certain
25 aspects of the suit with people outside her immediate family. Id. at 5. As a result, the
26 appellate court affirmed the district court order permanently enjoining McLean from
27 disclosing any information about her lawsuit and the resulting settlement agreement. Id. at
28 6.

1 Just as the district courts in Wakefield and McLean found it necessary to issue
2 permanent injunctions to enforce the agreement of the parties, so should this Court issue a
3 permanent injunction to enjoin Armstrong from further breaches which he candidly promises.

4 **1. The Church Will Be Irreparably Harmed**
5 **Absent The Issuance Of An Injunction**

6 The Los Angeles Court and the Court of Appeal have already found in this case that
7 the Church's legal remedies against Armstrong are inadequate. [Sep.St.No. 1, 86]. Not
8 only is Armstrong assisting adversaries of the Church, he is doing so to foster and perpetuate
9 relentless litigation against the Church to serve his own ends. Armstrong's conduct is
10 continuous, oppressive and malicious and has been undertaken for the express purpose of
11 injuring the Church. Even the Court's preliminary injunction order has been viewed so
12 myopically by Armstrong as permitting him to violate the provisions of the Agreement not
13 specifically enumerated in the injunction, instead of prohibiting him from future breaches.
14 Only a detailed permanent injunction fully enforcing the contractual provisions has any hope
15 of stopping Armstrong from waging his malicious, relentless war.

16 Although some of Armstrong's breaches are subject to a liquidated damages clause,
17 others, including the continual violations which he is engaging in through his operation of
18 FACTNet, are not. Moreover, Armstrong's breaches which are subject to the liquidated
19 damages clause are so numerous that it is patently obvious that Armstrong does not regard
20 the possibility of a large monetary judgment against him as a deterrent. All of these
21 violations must, accordingly, be enjoined.

22 **2. Armstrong Must Be Permanently Enjoined To Prevent A Multiplicity Of**
23 **Actions**

24 Armstrong has dramatically demonstrated, during the pendency of this action, just
25 why a permanent injunction must issue if the Church is to have meaningful relief. Most of
26 the breaches of the Agreement described in the Statement of Facts occurred after the initial
27 complaint in this action was filed. While some of them were added to the Second Amended
28 Complaint, the most recent events are not the subject of this action, yet they are among the
most egregious. For example, on February 2, 1995, right after this Court ordered him to

1 pay plaintiff \$100,000 in liquidated damages, Armstrong chose to circulate a declaration
2 stricken by this Court, to which he attached copied versions of the Church's confidential
3 religious scripture, to the media. He announced, by letter, that he intends to "stand his
4 ground" and continue to breach the Agreement. If a permanent injunction does not issue and
5 these threats are carried out by Armstrong, additional, repetitive litigation will be necessary
6 for the Church to secure its rights pursuant to the Agreement.

7 3. A Balancing Of The Equities Requires The Court
8 To Issue A Permanent Injunction

9 In determining whether to grant injunctive relief, the Court must balance the equities
10 before it and exercise its discretion in favor of the party most likely to be injured. Robbins
11 v. Superior Court (1985) 38 Cal.3d 199, 205, 211 Cal.Rptr. 398, 402. In balancing the
12 equities, the Court considers the harm that plaintiff is likely to suffer if the injunction is
13 denied as compared to the harm that defendants are likely to suffer if the injunction is
14 granted. Id. at 206.

15 Armstrong has no equities whatsoever in this action. No one has any right to
16 continue to violate a settlement agreement. Armstrong already has received the benefits of
17 the Agreement in the form of substantial monetary compensation. Armstrong's only "injury"
18 if he is enjoined is that he will not be able to violate the Agreement in the future.¹³ On the
19 other hand, the harm that will be suffered by the Church absent injunctive relief is the
20 irreparable harm of being victimized by Armstrong's violations, while others with interests
21 adverse to the Church benefit in legal proceedings from an unfettered flow of breached
22 obligations, wrongful disclosures and fiduciary infidelity. Furthermore, California courts
23 have long recognized the public interest in encouraging settlements (which necessitates that
24 such settlement agreements be enforceable on the parties concerned). Phelps v. Kozakar
25 (1983) 146 Cal.App.3d 1078, 1081, 194 Cal.Rptr. 872, 874. Thus, the balancing of the

26 ¹³ Armstrong has argued unsuccessfully that enforcement of the Agreement would infringe
27 on his First Amendment rights. However, Judge Sohigian, this Court, and the Court of
28 Appeal have all firmly held that Armstrong may, and has, contracted away these rights.

1 equities unquestionably favors the Church.

2 **IV. CONCLUSION**

3 As demonstrated herein, the Church has suffered substantial and irreparable harm due
4 to Armstrong's deliberate and systematic violations of the Agreement, and will continue to
5 do so absent issuance of a permanent injunction. The facts of the making of the Agreement,
6 performance by the Church, Armstrong's repeated breaches, and Armstrong's dedication to
7 continuing to breach the Agreement are undisputed. A preliminary injunction has already
8 issued, which has restrained Armstrong from violating some of the provisions of the
9 Agreement, but which has not prevented him from additional breaches. Issuance of a
10 permanent injunction is necessary for plaintiff to obtain meaningful relief.

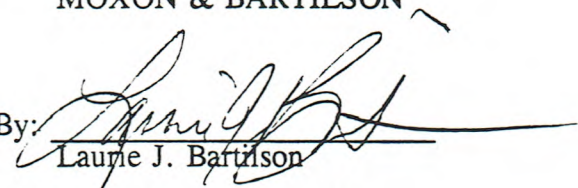
11 For all of the foregoing reasons, plaintiff requests that the Court enter a permanent
12 injunction enforcing the terms of the Agreement, according to the Proposed Order filed
13 herewith.

14 Dated: February 23, 1995

Respectfully submitted,

15 Andrew H. Wilson
16 WILSON, RYAN AND CAMPILONGO

17 MOXON & BARTILSON

18
19 By: 
Laurie J. Bartilson

20 Attorneys for Plaintiff
21 CHURCH OF SCIENTOLOGY
22 INTERNATIONAL
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On February 23, 1995, I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION OF THE TWENTIETH CAUSE OF ACTION OF PLAINTIFF'S COMPLAINT on interested parties in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[x] BY FAX AND MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal

cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on February 23, 1995 at Los Angeles, California.

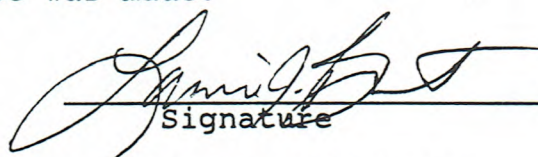
** (BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on _____ at Los Angeles, California.

(State) I declare under penalty of the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Bartilson
Print or Type Name


Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)